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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1267 OF 2005

The State of Maharashtra ... Appellant

V/s.

Shri Prabhakar Tukaram Pokle & Ors. ... Respondents

Dr.F.R. Shaikh, APP, for Appellant
Mr.Prashant Nagure for Respondent No.2
Mr.Girish Kulkarni for Respondent No.3
Mr.Shashi Pandey for Respondent No.5
Mr.Avinash Rasal with M.J Shetty for Respondent No.6

CORAM: **D.G. DESHPANDE &**
SMT.NISHITA MHATRE, JJ.

DATED: **JUNE 21, 2007**

P.C.:

. The State has filed this application for leave to appeal against the judgment dated 13.2.2001 of the Special Judge of Greater Bombay in Special Case No.5 of 1988. Six accused in this case were charged with offences punishable under sections 465, 466, 467, 468, 471, 420 r/w 120B of the IPC r/w sections 5(2), 5(1)(d) of the Prevention of Corruption Act, 1947. The case of the prosecution is that accused Nos.1 to 5 conspired with accused No.6 to increase the area of the properties bearing C.S. No.D113, 114, 1128, 1136 for the benefit of accused No.6.

2. The Special Court after considering the entire evidence on record which was mainly documentary in

nature, came to the conclusion that there was no conspiracy between the accused. The learned Judge has held that there was no evidence on record to show that even an attempt was made to claim additional FSI as alleged by the prosecution. The learned Judge was of the view that a bonafide mistake had been made by the accused in calculating the area and the explanation given by accused No.1 was probable.

3. It has been observed that the prosecution witnesses admitted that the plan drawn by accused No.1 showing certain measurements was correct and tallied with the original map (review sheet). Admittedly, the original map was not placed on record by the prosecution as it was lost. The prosecution witness Patwardhan has admitted during his cross-examination that the plans prepared by accused No.1 and those prepared by Prosecution witnesses Deshmukh and Shirwadkar tallied. The learned Judge has found that mistakes were made while calculating the area on Vaslewar basis. According to the prosecution, encroachments were shown in several places on the land in question which had not been accounted for while recording the area of the plots. Admittedly, the external boundaries of the site were correct. The learned Judge has held that no effort was made by the accused to obtain additional FSI and on the contrary the FSI which was available was not fully utilised. It has been held that mistakes were made by

the officers attached to the FSI cell.

4. Considering the impugned judgment, we find that the learned Judge has accepted a possible view in the matter, that accused No.1 had committed bonafide mistakes while calculating the area. There is no perversity in the findings recorded by the learned Judge. There is therefore, no need to grant leave in the present matter.

5. Application is therefore rejected.

(D.G. DESHPANDE, J.)

(SMT.NISHITA MHATRE, J.)